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June 17, 2016

Mr. Brian Person
Acting Area Manager
United States Department of Interior
Bureau of Reclamation
Mid-Pacific Region
Klamath Basin Area Office
6600 Washburn Way
Klamath Falls, OR 97603-9365

Re: C Flume Replacement Project Funds - Contract No. 16-WC-20-4838
Klamath Project Oregon-California

Dear Mr. Person,

I am in receipt of the June 15, 2016 correspondence addressed to KID Chair, Brent Cheyne, entitled above, setting forth what aspires to be a clarification of the status of the BOR funding of the above-referenced Project. Yet, neither the explanation provided, nor the printed medium on which it appears lends clarity to this issue for the benefit of the KID board, management and patrons.

As far as I can discern, the letter states that, "Reclamation has up to \$5,500,000 in Fiscal Year 2016 funds available to advance KID for use towards the Extraordinary Maintenance (XM) work" described in Article 3 of the C Flume Repayment Contract. Although the funds now claimed to be authorized and available are \$300,000 higher than what Mario Manzo, Federico Barajas and David Murillo had represented to Congressman Doug LaMalfa's Senior Staff Member, Erin Ryan and me during our June 7 meeting in the Bureau's Sacramento offices (\$5.2 million), this amount falls far (approximately \$2 million or 26%) short of the \$7,450,000 loan amount designated in Article 4(a) of the Contract.

In addition, your letter states that, "[p]lease note, however, as stated in Article 29 of the Contract, additional funds are subject to appropriation from Congress." It was and remains the District's understanding that Article 29 (which absolves Reclamation from all legal liability for failure to provide funds to the District needed for the C Flume Replacement Project that are contingent upon Congressional appropriations or agency allotment) applies only to *additionally* requested funds needed to complete the XM work. In other words, Article 29 applies only to funds *exceeding* the \$7.45 million loan amount that the BOR is *obligated* to provide pursuant to Article 4(a) of the Contract, *whether or not* all of the \$7.45 million is currently available. To suggest otherwise evidences an unapproved reinterpretation of the Contract's terms and conditions.

Your letter also strongly implies that the total previously [authorized loan amount of \\$10 million](#) is no

longer available. If true, this would render the \$5.5 million of currently available funding, which is approximately \$4.5 million or 45% less than the \$10 million authorization, *and \$3 million or 35% less than the winning contractor's unreliable \$8.5 million low bid*, severely inadequate to meet the financial needs of the C Flume Replacement Project. Consequently, it would require KID to impose greater per acreage assessments on its patrons than previously anticipated, as the total all-in cost of the Contract which has yet to be conclusively determined by Adkins Engineering is likely to rise above \$10 million! Page | 2

Your letter, furthermore, states that,

“As previously discussed the availability of Federal funds for the work is contingent upon KID first expending at least \$1,712,000 of its funds towards the work. KID will need to provide adequate documentation to Reclamation of such expenditures. [...] Following expenditure of KID’s funds, as discussed above, Reclamation will provide funds to KID for the XM work, consistent with Article 4 of the Contract.”

The C Flume Replacement Contract, however, nowhere mentions a District obligation to expend or report the expending of *any* amount of District funds *prior to* the Bureau making the loan amount available. I also do not recollect any such condition precedent being discussed or mentioned during the three (March 24, April 21 and June 7) BOR C Flume Replacement Project financing meetings I attended; nor do any of the correspondences exchanged between Reclamation and myself evidence such a contingency. To the contrary, Article 4(b) of the Contract enables the District to request that the Bureau dispense funds in advance of the XM work (e.g., to purchase materials and supplies) in installment amounts the Contracting Officer determines are necessary.

Moreover, I became aware only yesterday evening (June 16) of the meeting that you and Federico Barajas had convened earlier in the day with KID Board members Cheyne and Knoll and KID Interim Manager, Hollie Cannon. Apparently, following the media [reporting of KID’s June 9 public board meeting](#), the purpose of the June 16 meeting was to confirm whether the District intends to move forward with the Contract/Project. Based on your letter, it would appear that this new contingency was raised for the very first time at that meeting without my being informed.

Indeed, it would appear that these not so subtle changes to the Contract’s terms and conditions represent a rather material unilateral post-execution modification of the Contract by the Bureau which has not been clearly disclosed to or agreed upon by KID. Such changes also seem to demonstrate Mr. Murillo’s ongoing refusal to abide by our previous understanding that all C Flume Repayment Contract-related negotiations with Bureau contracting officers or counsel are to be undertaken by and brought to the attention of District counsel.

In light of the tactics the Bureau has employed to-date to entrap the District, in my absence, in a one-sided, take-it-or-leave-it contract the terms and conditions of which now seem to have changed like the skin of a chameleon, I have advised my client to proceed with the utmost caution. In fact, I have advised my client to treat the Contract executed on May 31, 2016 as void *ab initio* on the grounds that it was entered into under duress and false pretenses. Your June 15 correspondence only confirms these concerns.

KID deserves the opportunity to reach an informed decision regarding whether and how to proceed with this Contract free from BOR pressure, taking into consideration the nonlethal consequences of allowing the 45-day contractor bid period to expire. Until that time, I demand that the Bureau immediately provide for the record a further clarification of the Contract's funding terms and conditions.

Very truly yours,

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Lawrence A. Kogan

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Managing Principal

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